

The defendants then aver that, the land through which said stream runs, and on which said spoil bank is placed, belongs to said company, and is used by them in the lawful pursuit of their regular business ; that it is necessary for them to have some convenient place for depositing the offcast from the mines, and the most convenient place for such purpose is where the old channel of deep run was ; that in order to obtain said place, they cut and dug through the land of said company, a new channel for said stream, and then placed their spoil bank where the old channel had been, and which they contend they have a right, both in law and equity, to do. They further state, and charge, that the new channel made by them is not a narrow trench, totally inadequate to carry off the flow of water, as alleged in the bill, but, on the contrary, is, in every respect, as large, and fully as wide and deep as the old channel was, and carries off freely all water that flows there in ordinary seasons, and they deny that complainant has suffered any injury or been put to any expense or trouble, on account of the change of the channel of deep run, or the formation of the spoil bank, or that he is likely or liable to suffer any such damage. They admit, that until restrained by the writ of injunction granted in this case, they were employed in increasing and enlarging the said spoil bank, but utterly deny, that they have, in any way, filled up the new channel of said run, either by throwing off cast therein, or by any other means, or have caused any back-water against the dam of complainant, on the contrary, they aver that there is a fall of two feet at present in the course of the stream from said dam, to the point opposite where the said spoil bank is placed, and that said fall is not thereby impeded nor liable, nor likely to be, but is amply sufficient to carry off all the water of the stream. The answer then prays that the injunction may be dissolved.

Depositions were taken, and by consent of parties admitted to be read at the hearing of the motion to dissolve. The case was, upon this motion, submitted on written arguments of the solicitors of the respective parties, and on the 29th of July, 1848, the following opinion was delivered :]